

## Federal Trade Commission

## § 802.21

acquisitions of X stock by “A” would not be exempt under section 7A(c)(9).

[43 FR 33544, July 31, 1978, as amended at 66 FR 8693, Feb. 1, 2001; 70 FR 4994, Jan. 31, 2005]

### § 802.10 Stock dividends and splits; reorganizations.

(a) The acquisition of voting securities pursuant to a stock split or pro rata stock dividend is exempt from the requirements of the Act under section 7A(c)(10).

(b) An acquisition of non-corporate interests or voting securities as a result of the conversion of a corporation or unincorporated entity into a new entity is exempt from the requirements of the Act if:

(1) No new assets will be contributed to the new entity as a result of the conversion; and

(2) Either:

(i) As a result of the transaction the acquiring person does not increase its per centum holdings in the new entity relative to its per centum holdings in the original entity; or

(ii) The acquiring person controlled the original entity.

*Examples:* 1. Partners A and B hold 60 percent and 40 percent respectively of the partnership interests in C. C is converted to a corporation in which A and B hold 60 percent and 40 percent respectively of the voting securities. No new assets are contributed. The conversion to a corporation is exempt from notification for both A and B.

2. Shareholder A holds 55% and B holds 45% of the voting securities of corporation C. C is converted to a limited liability company in which A holds 60% and B holds 40% of the membership interests. No new assets are contributed. The conversion to a limited liability company is exempt from notification because A controlled the corporation. If however, B holds 55% and A holds 45% in the new limited liability company, the conversion is not exempt for B and may require notification because control changes.

3. Shareholders A, B and C each hold one third of the voting securities of corporation X. Pursuant to a reorganization agreement, A and B each contribute new assets to X and C contributes cash. X is then being reincorporated in a new state. Each of A, B and C receive one third of the voting securities of newly reincorporated C. The reincorporation is not exempt from notification and may be reportable for A, B and C because of the contribution of new assets.

[70 FR 11513, Mar. 8, 2005]

### § 802.20 [Reserved]

### § 802.21 Acquisitions of voting securities not meeting or exceeding greater notification threshold (as adjusted).

(a) An acquisition of voting securities shall be exempt from the requirements of the act if:

(1) The acquiring person and all other persons required by the act and these rules to file notification filed notification with respect to an earlier acquisition of voting securities of the same issuer;

(2) The waiting period with respect to the earlier acquisition has expired, or been terminated pursuant to § 803.11, and the acquisition will be consummated within 5 years of such expiration or termination; and

(3) The acquisition will not increase the holdings of the acquiring person to meet or exceed a notification threshold (as adjusted) greater than the greatest notification threshold met or exceeded in the earlier acquisition.

*Examples:* 1. In 2004, Corporation A acquired \$53 million of the voting securities of corporation B and both “A” and “B” filed notification as required, indicating the \$50 million threshold. Within five years of the expiration of the original waiting period, “A” acquires additional voting securities of B but not in an amount sufficient to meet or exceed \$100 million (as adjusted) or 50 percent of the voting securities of B. No additional notification is required.

2. In 2004, Corporation A acquired \$53 million of the voting securities of corporation B and both “A” and “B” filed notification as required, indicating the \$50 million threshold. Suppose that in year three following the expiration of the waiting period, the \$50 million notification threshold has been adjusted to \$56 million pursuant to Section 7A(a)(2)(a) of the Act. “A” now intends to acquire an additional \$5 million of the voting securities of B. “A” is not required to file another notification even though it now holds voting securities in excess of the \$56 million notification threshold (which is greater than the \$50 million notification threshold indicated in its filing), because it has not met or exceeded a notification threshold (as adjusted) greater than the notification threshold exceeded in the earlier acquisition (i.e. \$100 million (as adjusted) or 50% notification thresholds).

3. Same facts as in Example 2 above except now the five year period has expired. Suppose that, the \$50 million notification threshold has been adjusted to \$57 million